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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ERNEST J. BROOKS, III,

Petitioner,

v.

KEN CLARK, WARDEN,

Respondent.

08cv0125 JM (BLM)

**EX PARTE MOTION FOR
ENLARGEMENT OF TIME
TO FILE (1) MOTION TO
DISMISS OR (2) ANSWER TO
PETITION FOR WRIT OF
HABEAS CORPUS; and
DECLARATION OF
ELIZABETH A. HARTWIG**

Judge: Hon. Barbara L. Major

**EX PARTE MOTION FOR ENLARGEMENT OF TIME TO FILE (1) MOTION TO
DISMISS OR (2) ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW RESPONDENT KEN CLARK, Warden, California Substance Abuse Treatment Facility/State Prison, Corcoran, California, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and requests this Court order an enlargement of time in which to file the Motion to Dismiss or Answer to the Petition for Writ of Habeas Corpus in the above-captioned case.

Respondent's Motion to Dismiss is due on or before **April 28, 2008** and the Answer to the Petition for Writ of Habeas Corpus is presently due on or before **May 12, 2008**. Respondent

1 requests an enlargement of time of **thirty days**, to **May 28, 2008**, to file the Motion to Dismiss the
2 Petition, **or alternatively, June 12, 2008**, to file the Answer to the Petition.

3 Declarant has not requested any previous extensions.

4 The state appellate record had to be requested from archives, and has only recently been
5 received. There has not yet been time to review the records or select and copy the portions that
6 would be germane to a response to the Petition for Writ of Habeas Corpus.

7 Petitioner has filed numerous petitions in state court, and Declarant has requested copies
8 of those petitions, which are still being received piecemeal.

9 Declarant is reviewing the Petition for Writ of Habeas Corpus to determine whether a
10 Motion to Dismiss or Answer is appropriate, and then correlate the portions of the state record which
11 would be required for the Court's decision.

12 Declarant requests an additional thirty days to complete the Motion to Dismiss or Answer
13 for filing with this Court. Declarant has been unable to complete the Motion to Dismiss or Answer
14 prior to April 28, 2008 because of other work obligations which were assigned prior to *Brooks v.*
15 *Clark*, to wit, *People v. Patrick Robert English*, No. G038624, Respondent's Brief filed March 21,
16 2008; *People v. Daniel Parra*, No. D050069, Respondent's Brief filed March 27, 2008; *People v.*
17 *Robert James Brobst*, No. E042987, Respondent's Brief filed March 27, 2008; *People v. Arthur*
18 *Deshawn Smith*, No. E042145, Respondent's Brief filed April 9, 2008; *People v. Ed Emmanuel*
19 *Knox*, No. E043342, Respondent's Brief filed April 17, 2008; *People v. Singletary*, Appellate No.
20 G038283, oral argument April 21, 2008; *Fields v. Ryan*, Ninth Circuit No. 06-55458, Respondent's
21 Brief to be filed April 22, 2008.

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CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court grant the enlargement of time to May 28, 2008 to file the Motion to Dismiss the Petition and June 12, 2008 to file the Answer to the Petition for Writ of Habeas Corpus.

Dated: April 22, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

BARRY CARLTON
Supervising Deputy Attorney General

/s/ Elizabeth A. Hartwig

ELIZABETH A. HARTWIG
Deputy Attorney General
Attorneys for Respondent

EAH:lb
70121587.wpd
SD2008800668

**DECLARATION OF ELIZABETH A. HARTWIG IN SUPPORT OF EX PARTE
MOTION FOR ENLARGEMENT OF TIME**

Elizabeth A. Hartwig hereby declares under penalty of perjury as follows:

She is a deputy attorney general for the State of California and has been assigned to prepare all necessary pleadings in the case of *Brooks v. Clark*, Case No. 08 CV0125 JM (BLM). She is requesting an extension of time of thirty days to complete the Motion to Dismiss the Petition or Answer to the Petition for Writ of Habeas Corpus for the following reasons.

The state appellate record has only recently been received from state archives, but has not yet been reviewed or copied for lodgment with this Court, when the Motion to Dismiss or Answer to the Petition for Writ of Habeas Corpus is filed.

Copies of Petitioner's multiple fillings in state court have been requested and are being received piecemeal. Those documents must be reviewed in conjunction with the Petition to determine whether a Motion to Dismiss or answer to the Petition is appropriate. Then those documents will also have to be copied for lodgment with the Court.

Declarant has not been able to complete a Motion to Dismiss or Answer to the Petition because of other work obligations which were assigned prior to *Brooks v. Clark*, to wit, *People v. Patrick Robert English*, No. G038624, Respondent's Brief filed March 21, 2008; *People v. Daniel Parra*, No. D050069, Respondent's Brief filed March 27, 2008; *People v. Robert James Brobst*, No. E042987, Respondent's Brief filed March 27, 2008; *People v. Arthur Deshawn Smith*, No. E042145, Respondent's Brief filed April 9, 2008; *People v. Ed Emmanuel Knox*, No. E043342, Respondent's Brief filed April 17, 2008; *People v. Singletary*, Appellate No. G038283, oral argument April 21, 2008; *Fields v. Ryan*, Ninth Circuit No. 06-55458, Respondent's Brief to be filed April 22, 2008.

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Brooks v. Clark, Warden**

No.: **08cv0125 JM (BLM)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **April 22, 2008**, I served the attached **EX PARTE MOTION FOR ENLARGEMENT OF TIME TO FILE (1) MOTION TO DISMISS OR (2) ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS; and DECLARATION OF ELIZABETH A. HARTWIG** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

ERNEST J. BROOKS, III
T-61049
CALIFORNIA SUBSTANCE ABUSE
TREATMENT
FACILITY/STATE PRISON
P.O. BOX 5242
CORCORAN, CA 93212-5242
[Pro Se -- 1 Copy]

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 22, 2008**, at San Diego, California.

Loreen Blume

Declarant


Signature